

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

FRANCISCO ORNELAS,

Plaintiff,

v.

**NEBRASKA DEPARTMENT OF
CORRECTION, ET AL.,**

Defendants.

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CASE NO. 8:09CV196

**MEMORANDUM
AND ORDER**

This matter is before the court on Plaintiff's Motion to Dismiss, which the court liberally construes as a Motion for Voluntary Dismissal, filed pursuant to [Federal Rule of Civil Procedure 41](#). (Filing No. [8](#).) In his Motion, Plaintiff requests that the court dismiss this matter without prejudice because he has "been advised of deficiencies in pleading and preparation." (*Id.*) Defendants have not yet been served with summons, and the court finds that voluntary dismissal is warranted under the circumstances.

Plaintiff also recently sent a Letter to Magistrate Judge Piester, stating that he never submitted a signed Motion to Proceed In Forma Pauperis. (Filing No. [10](#).) Indeed, on June 18, 2009, the Clerk of the court informed Plaintiff that his Motion for Leave to Proceed In Forma Pauperis (Filing No. [2](#)) was not signed, and would be stricken from the record if he failed to submit a signed pleading within 15 days. (Filing No. 6, text-only entry.) It is clear from Plaintiff's recent Letter that he did not, and does not intend to, correct the signature deficiency in his Motion for Leave to Proceed In Forma Pauperis. (Filing No. [10](#).) In light of this, and in light of the dismissal of this matter, Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Filing No. [2](#)) and the corresponding Memorandum and Order granting the Motion (Filing No. [9](#)) are stricken.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Motion to Dismiss (Filing No. [8](#)) is granted. This matter is dismissed without prejudice;
2. The Clerk of the court is directed to strike from the record Plaintiff's Motion for Leave to Proceed In Forma Pauperis (Filing No. [2](#)) and the Memorandum and Order granting that Motion (Filing No. [9](#));
3. The Clerk of the court is directed to send a copy of this Memorandum and Order to the appropriate official at Plaintiff's institution. The institution shall disregard the court's previous Memorandum and Order, and shall not collect any fees in this matter;
4. A separate judgment will be entered in accordance with this Memorandum and Order; and
5. Plaintiff's July 21, 2009, Letter, construed as a motion, is denied as moot.

DATED this 31st day of July, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

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